

Rule 27, Ariz. R. Crim. P.

PROBATION: Concurrent probation and prison terms are permissible in Arizona
.....**Revised 3/2010**

A defendant may be placed on probation concurrent with a prison sentence. *State v. Jones*, 124 Ariz. 24, 27, 601 P.2d 1060, 1063 (1979). In *State v. Mathews*, 130 Ariz. 46, 633 P.2d 1039 (App. 1981), the defendant committed new offenses while on probation. He pleaded guilty to three of the new offenses and admitted violating his probation. The trial court imposed prison terms on the probation revocation and on two of the new offenses, and placed him on probation on the third offense. The court did not set any effective date for the beginning of the probation term. *Id.* at 48, 633 P.2d at 1041. On appeal, the defendant argued that the court could not impose concurrent terms of probation and prison. He reasoned that the terms of probation required him to do such things as remain employed and pay restitution, and it was impossible for him to comply with those terms of probation while he was in prison. *Id.* at 50-51, 633 P.2d at 1043-44.

The Court of Appeals found no error and stated that “concurrent prison and probationary terms are permissible in Arizona.” *Id.* at 51, 633 P.2d at 1044. The Court said:

In any such situation, certain usual probationary terms and conditions will obviously be impossible to perform while a probationer is incarcerated in prison. However, we think that any such terms and conditions are implicitly applicable only upon discharge from confinement. That this was the trial court’s intent is borne out by [the trial court’s] comments ... to the effect that restitution would be required only upon appellant’s release from prison. We do not think it is fatal to the imposition of probation and its attendant terms and conditions that the trial court failed to explicitly mention the common sense proposition that many of them could not be fulfilled while appellant was in prison.

Id.